Variance in Criminal History Scores and Sentencing Decisions

2024 Issue Paper Number 1

Mission Statement

The mission of the District of Columbia Sentencing Commission is to implement, monitor, and support the District's Voluntary Sentencing Guidelines, to promote fair and consistent sentencing policies, to increase public understanding of sentencing policies and practices, and to evaluate the effectiveness of the guidelines system in order to recommend changes based on actual sentencing and corrections practice and research.

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District of Columbia Voluntary Sentencing Guidelines

2024 Issue Paper #1: Variance in Criminal History Scores and Sentencing Decisions

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I.   Introduction

The District of Columbia Voluntary Sentencing Guidelines ("the Guidelines") create a structured sentencing system used by Superior Court of the District of Columbia ("Superior Court") judges to sentence adult defendants convicted of felony offenses in the District of Columbia. At the core of the Guidelines are two Grids that are used to determine the recommended sentencing range and sentencing options for each felony offense being sentenced: the Drug Grid and the Master Grid.[1] Within these Grids, the severity of the offense committed, and the defendant's prior Criminal History (CH) serve as markers for determining the recommended sentence range and sentence type. CH scores are separated into five distinct columns (A - E) on the Guidelines Grids, with column A (0 – 0.5 points) designating defendants with no or very limited CH and column E (6+ points) designating those with the highest CH scores.[2] The Guidelines Grids are structured in a manner that as a defendant's CH score increases, the sentence length and/or sentence type available under the Guidelines become more severe.

It is important to note that the Sentencing Guidelines are completely voluntary which means that Superior Court judges are not required to follow them. Even though they are completely voluntary, Superior Court judges adhere to the Guidelines in most sentencings. The Commission has recorded an annual Guidelines compliance rate at or above 91.7% for the past 10 years. An individual's CH score at the time of sentencing is one of the three primary factors used by the Commission to determine compliance with the Guidelines.[3] The Court Services and Offender Supervision Agency (CSOSA) provides the Commission with the numeric CH score for each sentenced defendant who receives a Presentence Investigation Report (PSI).[4]

This issue paper examines how sentences imposed by Superior Court judges vary depending on the total CH score of sentenced defendants. The sentencing data, provided by the D.C. Superior Court, encompasses all non-drug adult felony sentences that were imposed between 2013 and 2022 in the District of Columbia. The first section of this paper provides a high-level overview of the data. This includes an analysis of the average and median numeric CH score within each CH column on the Guidelines Grids. It also contains a detailed breakdown of sentence types based on CH score and an exploration of how the imposed sentences differ within each offense severity group (OSG) across CH columns. The latter section of this paper delves deeper into a specific subset of these cases, analyzing the sentence variations within each CH column.

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[1] The Master and Drug sentencing Grids can be found in Appendices A and B of this paper.

[2] The Criminal History score is the total number of points a defendant accumulates for their prior convictions and prior adjudications, calculated according to the Guidelines' rules for scoring. *See* Voluntary Sentencing Guidelines (DCVSG) Chapter 2.

[3] The other two primary factors are the offense of conviction and the sentence imposed.

[4] A detailed breakdown of each felony individual's criminal history score is provided to the Court before sentencing. However, the Commission only receives basic criminal history information from CSOSA.

II. High-Level Overview

Between 2013 and 2022, there were 13,148 total non-Drug felony counts sentenced by the D.C. Superior Court. The 13,148 total counts sentenced do not include the following:

- Defendants under the age of 18 at the time of the offense;
- Drug, Misdemeanor, Miscellaneous, and Traffic offenses;
- Counts that <u>did not</u> result in a conviction;
- Life sentences;[5]
- Defendants missing CH information; [6] and
- Sentences following a remand from the Court of Appeals, probation revocations, the granting of a compassionate release, Incarceration Reduction Amendment Act, or other post-sentencing motions.

IIA. Criminal History Column Breakdown

Table 1 shows the 13,148 counts sentenced broken down by the defendant's CH column, as well as the average and median numeric CH score within each column. Please note that this data is presented at the count level. The overall average CH score was 1.83 and the overall median CH score was 1.0. Most sentenced defendants had a CH score in column A (36%), while the smallest proportion had a CH score in column E (5%). A significant majority of the CH scores were below 4.0 points (85%, *n* =11,219). This indicates that defendants with an extensive CH constitute the *minority* of defendants sentenced by the Superior Court.

Table 1: Distribution of CH Columns, Count Level

	A *0 – 0.5 points*	B *0.75 – 1.75 points*	C *2 – 3.75 points*	D *4 – 5.75 points*	E *6+ points*
N	4,694	3,257	3,268	1,294	635
% Total	36%	25%	25%	10%	5%
Average CH Score	0.13	1.16	2.71	4.62	7.59
Median CH Score	0.0	1.0	2.75	4.5	7.0

IIB. Sentence Type

The Commission classifies each felony sentence imposed into three sentence type categories: prison, [7] short split,[8] and probation.[9] Figure 1 displays a breakdown of sentence types within each CH column. Prison was

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[5] Life sentences are excluded because they do not have a defined sentence that can be analyzed.

[6] The Commission does not have CH scores for cases in which the Court imposed a sentence without a PSI.

[7] In a compliant prison sentence, the Court sentences the defendant to a prison term within the applicable Grid box range. None of the time imposed is suspended, but the prison term may be followed by a period of supervised release as governed by D.C. Code § 24-403.01(b). Long split sentences are categorized as prison sentences because a compliant long split sentence requires the defendant to initially serve at least the minimum Guidelines compliant prison sentence. For data reporting purposes, all split sentences that do not qualify as a short split sentence under the Guidelines are classified as a prison sentence.

[8] In a compliant short split sentence, the Court imposes a sentence within the applicable prison range, suspends execution of all but six months or less (but not all) of it, and places the defendant on probation for a period of up to five years.

[9] In a compliant probation sentence, the Court imposes a sentence within the applicable Guidelines prison range, suspends execution of the entire sentence, suspends the portion of supervised release, and places the defendant on probation for up to five years.

the most frequently imposed sentence type in all CH columns (n = 9,364), representing 71% of all non-Drug adult felony sentences. Prison sentences were imposed for 95% of defendants with a CH score in columns D and E, combined. Comparatively, prison sentences were imposed for 59% of defendants with a CH score in columns A and B, combined. The discrepancy in the proportion of prison sentences imposed reflects both the structure of the Master Grid, and the severity of the defendant's prior CH.

Figure 1: CH Column by Sentence Type, Count Level
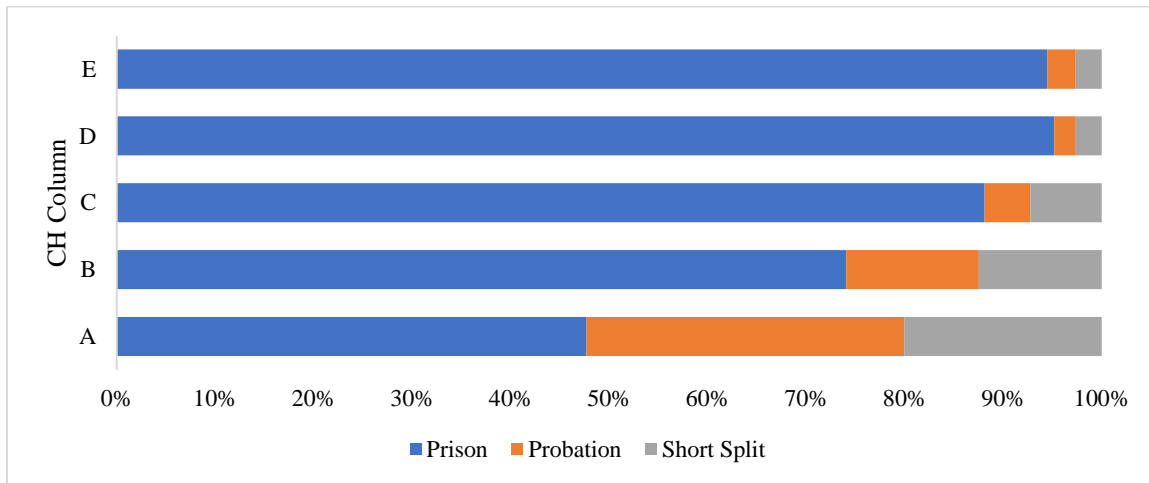
IIC. Average Sentence Imposed

Table 2 shows the average sentences imposed, expressed in months, based on the defendant's CH score column and the OSG for the convicted offenses. The sample size (n) for each OSG and CH column intersection is also provided, with data presented at the count level. Cells shaded in dark red correspond to instances of greater average sentences imposed, while cells in light red and white represent counts with lower average sentences imposed.

The predominant pattern suggests that an increase in CH severity is associated with an increase in the severity of the average sentence imposed. This trend is consistent for offenses categorized within OSGs M3 through M8. However, this expected pattern is not observed for offenses within OSGs M1, M2, and M9. For offenses in M1 and M9, the average sentence initially drops from CH column A to column B, subsequently resuming an upward trajectory from CH column B onward.[10] Conversely, for M2 offenses, the average sentence reaches a peak in CH column C, thereafter, reaching a plateau.

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[10] The recommended sentencing range for offenses in OSG M1 remains constant for CH columns A – D. It is also important to note that First Degree Murder, an M1 offense, has a mandatory minimum of 30 years, meaning that this term of imprisonment must be imposed by law and cannot be suspended. For offenses in OSG M9, more research is needed to determine what offenses are causing the declines from column A to B.

Table 2: Average Sentence Imposed in Months Based on OSG and CH, Count Level

	A	B	C	D	E
M1	410.7 (n=22)	399.8 (n=13)	430.8 (n=16)	493.3 (n=9)	550.0 (n=6)
M2	194.0 (n=76)	214.5 (n=51)	243.1 (n=76)	228.0 (n=25)	207.4 (n=14)
M3	121.3 (n=136)	132.4 (n=55)	143.8 (n=96)	166.6 (n=39)	182.2 (n=11)
M4	77.1 (n=86)	93.5 (n=55)	97.2 (n=54)	111.1 (n=23)	154.8 (n=10)
M5	56.4 (n=383)	66.8 (n=324)	70.3 (n=362)	85.4 (n=146)	108.0 (n=52)
M6	33.8 (n=779)	39.6 (n=473)	45.3 (n=545)	52.3 (n=215)	63.4 (n=112)
M7	23.3 (n=185)	27.0 (n=180)	30.2 (n=229)	43.4 (n=94)	53.8 (n=95)
M8	12.4 (n=2,620)	16.8 (n=1,774)	21.1 (n=1,609)	24.7 (n=599)	28.4 (n=256)
M9	9.9 (n=407)	9.6 (n=332)	12.3 (n=281)	15.7 (n=144)	21.7 (n=79)

Low   High

III. Trends in Criminal History Score Variance

This section analyzes the specific scores within each CH column and explores how the imposed sentences vary within the recommended sentencing range. To accomplish this, three frequently sentenced offenses have been selected as examples: Possession of a Firearm – Crime of Violence (PFCOV), Assault with a Dangerous Weapon (ADW), and Unlawful Possession of a Firearm – Prior Felony (UPF-PF). A description of each offense contained in this analysis is outlined below, accompanied by the total number of counts sentenced for each offense, and the proportion of all adult counts sentenced by the Superior Court during this timeframe.

Table 3: Offense Descriptions

Offense	Code	Statutory Description	Total Counts Sentenced	Proportion of all Counts Sentenced
Possession of a Firearm – Crime of Violence (PFCOV)	§ 22–4504(b)	No person shall within the District of Columbia possess a pistol, machine gun, shotgun, rifle, or any other firearm or imitation firearm while committing a crime of violence or dangerous crime.	462	4%
Assault with a Dangerous Weapon (ADW)	§ 22–402	Every person convicted of an assault with intent to commit mayhem, or of an assault with a dangerous weapon,[11] shall be sentenced to imprisonment for not more than 10 years.[12]	802	6%
Unlawful Possession of a Firearm – Prior Felony (UPF-PF)	§ 22–4503(a)(1)	No person shall own or keep a firearm or have a firearm in his or her possession or under his or her control, within the District of Columbia, if the person has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year. [13]	1,385	11%

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[11] "Dangerous weapon" refers to any object that is used or threatened to be used in a way that is likely to produce serious bodily injury.

[12] Attempted ADW convictions are excluded from this analysis.

[13] Unlawful Possession of a Firearm - Prior Crime of Violence (UPF-PCOV) convictions are excluded from this analysis.

Figure 2 shows the average sentence imposed, expressed in months, within each CH column for these offenses. For all offenses, the average sentence imposed increased as the CH of the sentenced defendant increased. It is important to note that PFCOV has a mandatory minimum of five years and UPF-PF has a mandatory minimum of one year.[14] Reference Table 4 for the average CH score, as well as the number of counts in each CH column for these offenses.

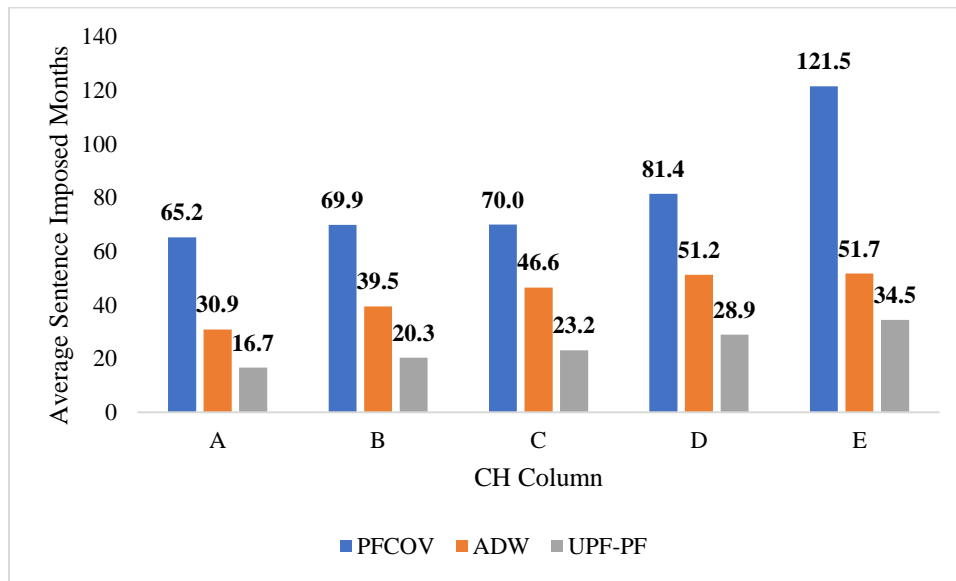*Figure 2: Average Sentence Imposed by CH Column for PFCOV, ADW, and UPF-PF Offenses, Count Level*

Table 4: Average CH Score per CH Column for PFCOV, ADW, and UPF-PF Offenses, Count Level

|	**A**	**B**	**C**	**D**	**E**
PFCOV	0.12 *(n = 116)*	1.15 *(n = 131)*	2.84 *(n = 146)*	4.45 *(n = 52)*	8.34 *(n = 17)*
ADW	0.15 *(n = 310)*	1.12 *(n = 194)*	2.74 *(n = 191)*	4.60 *(n = 80)*	7.19 *(n = 27)*
UPF-PF	0.23 *(n = 110)*	1.24 *(n = 423)*	2.73 *(n = 593)*	4.59 *(n = 205)*	6.75 *(n = 54)*

IIIA. Possession of a Firearm – Crime of Violence (PFCOV)

From 2013 to 2022, 462 PFCOV counts were sentenced, representing 4% of all counts sentenced within the same period. Figure 3 provides a closer examination of the average sentences imposed for PFCOV. Contrary to the data presented in Figure 2, where an increase in the average sentence imposed correlates with the severity of the CH column, Figure 3 shows the average sentence imposed for each score within a given column fluctuates and does not continuously increase with severity. The greatest fluctuations are seen within CH columns D and E; however, it is imperative to note that the averages in these CH columns are derived from a comparatively limited sample size due to fewer sentenced counts.[15]

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[14] The mandatory minimum may be suspended for defendants sentenced pursuant to the Youth Rehabilitation Act (YRA). D.C. Code § 24-901(6).

[15] The peaks are comprised of two counts where the defendant had a CH Score of 4.75, one count where the defendant had a CH Score of 5.75, and one count where the defendant had a CH Score of 10.

Figure 3: Average Sentence Imposed by CH for PFCOV Offenses, Count Level
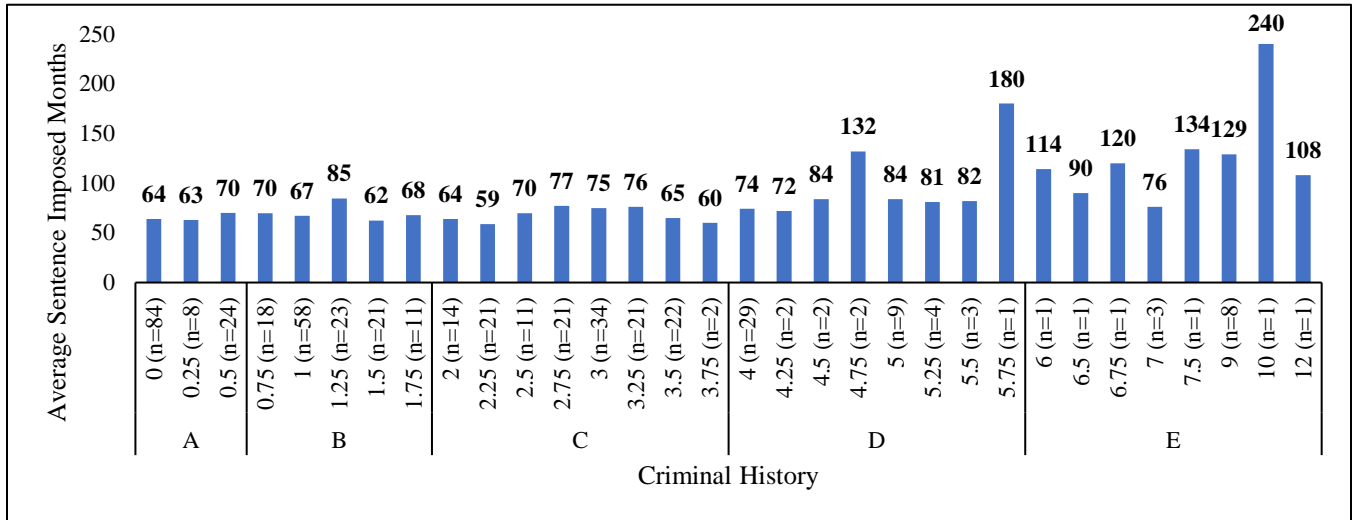
IIIB. Assault With a Dangerous Weapon (ADW)

From 2013 to 2022, 802 ADW counts were sentenced, representing 6% of all counts sentenced within the same period. As shown in Figure 4, the average sentence imposed fluctuates within each CH column. A singular significant peak is observed at CH score 7.5; however, it should be noted that there are only two counts where the defendant had this CH score.

*Figure 4: Average Sentence Imposed by CH for ADW Offenses, Count Level*
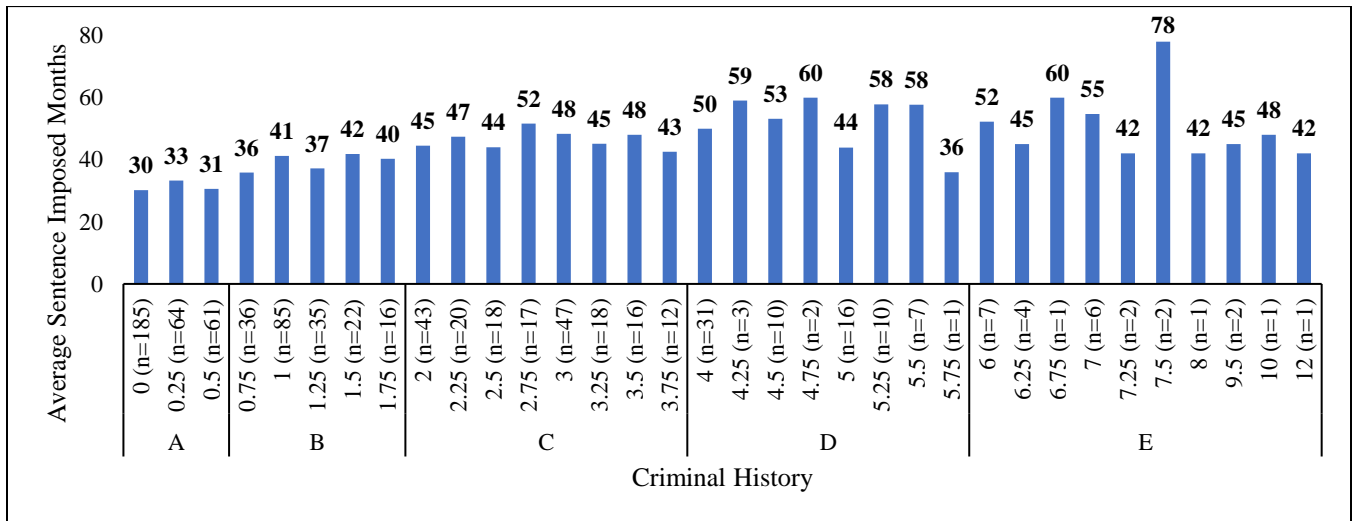
IIIC. Unlawful Possession of a Firearm – Prior Felony (UPF-PF)

Between 2013 and 2022, 1,385 counts were sentenced under UPF-PF, representing 11% of all counts sentenced during this timeframe. The greatest variation can be observed in CH column E, where the average sentence imposed fluctuates across scores, peaking at CH score 9. However, it is worth noting that only one count was associated with this CH score. There were 66 counts where the defendant had a CH score below one point. Most commonly a defendant convicted of UPF-PF has a minimum CH score of at least one point

due to the predicate prior felony for the offense. However, the predicate felony is not required to be a conviction the Guidelines score as a felony.[16]

Figure 5: Average Sentence Imposed by CH for UPF-PF Offenses, Count Level
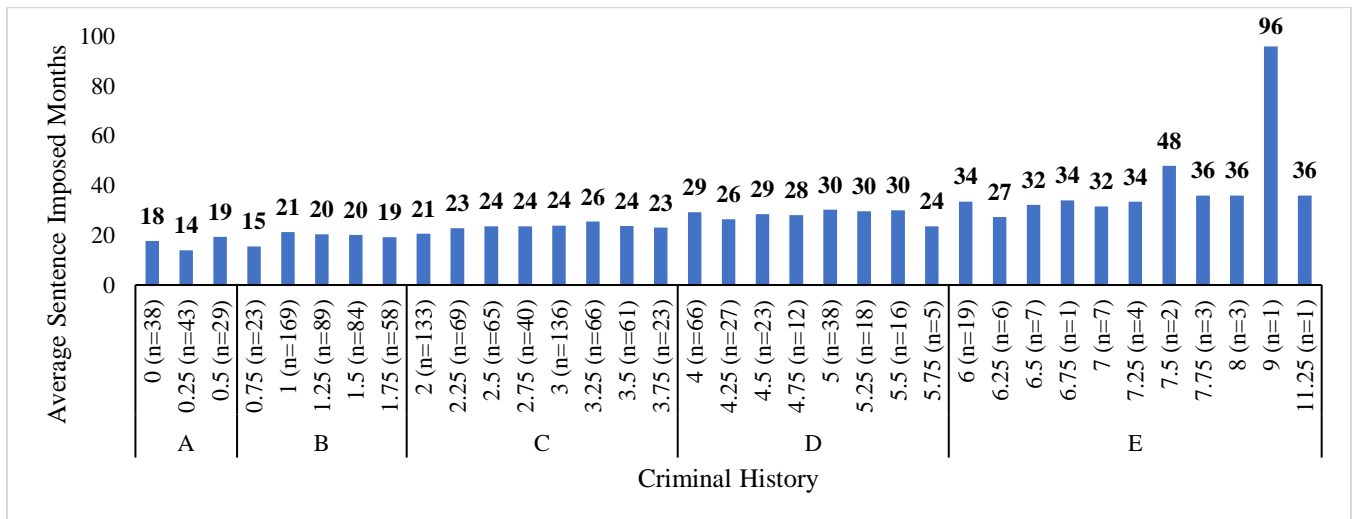
IV. Discussion and Conclusion

This analysis delves into the intricate relationship between sentences imposed by Superior Court judges and the CH score of sentenced defendants. Through a high-level lens, it was observed that sentences imposed generally correlate with the severity of a defendant's CH column, showing that a higher CH column often results in a more severe sentence. Notably, sentenced defendants within CH columns D and E received the greatest proportion of prison sentences, as well as the highest average sentence imposed across OSGs. This finding aligns with the structure of the Master Grid, wherein the Guidelines-compliant non-prison sentence types are available to defendants with lower CH scores. However, through a narrower lens, it becomes evident that sentences do not perfectly align with the severity of CH scores within an individual Grid box, revealing a dynamic fluctuation of average sentences within these CH columns.

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[16] For example, when an out-of-District predicate felony conviction may be scored as a misdemeanor under the Guidelines because it closely matches a misdemeanor offense in the District or when an underlying predicate felony conviction has lapsed and is no longer scored. See DCVSG § 2.2.3 for more information on scoring prior convictions.

V. Appendix A – Master Grid

August 2023 -- Sentencing Ranges Listed in Months

		Criminal History Score				
	Ranking Group Most Common Offenses	0 to ½ A	¾ to 1¾ B	2 to 3¾ C	4 to 5¾ D	6 + E
3 Points*	**Group 1** 1st degree murder w/armed 1st degree murder	360 - 720	360 - 720	360 - 720	360 - 720	360 +
	Group 2 2nd degree murder w/armed 2nd degree murder 1st degree sex abuse 1st degree sex abuse w/armed	144 - 288	156 - 300	168 - 312	180 - 324	192 +
	Group 3 Voluntary manslaughter w/armed 1st degree child sex abuse Carjacking while armed Assault with intent to kill w/armed Armed burglary I	90 - 180	102 - 192	114 - 204	126 - 216	138 +
	Group 4 Aggravated assault w/armed Voluntary manslaughter	48 - 120	60 - 132	72 - 144	84 - 156	96 +
	Group 5 PFCOV Armed robbery Burglary I Obstruction of justice Assault with intent to kill	36 - 84	48 - 96	60 - 108	72 - 120	84 +
2 Points*	**Group 6** ADW Robbery Aggravated assault 2nd degree child sex abuse Assault with intent to rob	18 - 60	24 - 66	30 - 72	36 - 78	42 +
	Group 7 Burglary II 3rd degree sex abuse UPF-PCOV Negligent homicide Attempt 2nd degree sex abuse	12 - 36	18 - 42	24 - 48	30 - 54	36 +
1 Point*	**Group 8** Carrying a pistol (CPWL) UUV Attempt robbery/burglary UPF [40] 1st degree theft Assault w/significant bodily injury	6 - 24	10 - 28	14 - 32	18 - 36	22 +
	Group 9 Escape/prison breach BRA Receiving stolen property Forgery/uttering Fraud	1 - 12	3 - 16	5 - 20	7 - 24	9 +

*Criminal History Points for prior convictions in these groups.

White/unshaded boxes – prison or compliant long split only.

Dark shaded boxes – prison, compliant long split, or short split permissible.

Light shaded boxes – prison, compliant long split, short split, or probation permissible.

VI. Appendix B – Drug Grid

August 2023 -- Sentencing Ranges Listed in Months

	Ranking Group Most common offenses	Criminal History Score				
		0 to ½ A	¾ to 1¾ B	2 to 3¾ C	4 to 5¾ D	6 + E
2 Points*	**Group 1** Distribution w/a (any drug) PWID w/a (any drug)	30-72	36-78	42-84	48-90	54+
1 Point*	**Group 2** Distribution or PWID (schedule I or II narcotic/ abusive drugs)	12-30	16-36	20-42	24-48	28+
1 Point*	**Group 3** Distribution or PWID (except schedule I or II narcotic or abusive drugs) Attempt distribution or attempt PWID (schedule I or II narcotic/ abusive drugs) Possession of Liquid PCP	6-18	10-24	14-30	18-36	22+
3/4 Point*	**Group 4** Attempt distribution or attempt PWID (except schedule I or II narcotic or abusive drugs) Attempt possession of liquid PCP	3-12	5-16	7-20	9-24	11+
*Criminal History Points for prior convictions in these groups.						
White/unshaded boxes – prison or compliant long split only.						
Dark shaded boxes – prison, compliant long split, or short split permissible.						
Light shaded boxes – prison, compliant long split, short split, or probation permissible.						